राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 09 जून, 2020 / 19 ज्येष्ठ, 1942

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 11*th September,* 2019

No. Shram (A) 6-4/2019 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour

Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref./Application	Title	Section
1.	Ref.25/19	Shri Chakra Bahadur *V/s* The General Manager-*cum*-HOP, HPPCL, Shongtong Karchham Hydro electric Power Project, Reckong Peo & Anr.	10
2.	Ref. 24/2019	Shri Shanta Kumar *V/s* The General Manager-*cum*-HOP, HPPCL, Shongtong Karchham Hydro electric Power Project, Reckong Peo & Anr.	10
3.	Ref 23/2019	Shri Bikash Kumar *V/s* The General Manager-*cum*-HOP, HPPCL, Shongtong Karchham Hydro electric Power Project, Reckong Peo & Anr.	10
4.	Ref 22/2019	Shri Opender Budha Kumar *V/s* The General Manager-*cum*-HOP, HPPCL, Shongtong Karchham Hydro electric Power Project, Reckong Peo & Anr.	10
5.	Ref. 08/2016	Shri Monu Singh *V/s* Sacred Heart Convent School, Dhalli Shimla, H.P.	10
6.	Ref. 14/2016	Smt. Sumitra Devi *V/s* Sacred Heart Convent School, Dhalli Shimla, H.P.	10
7.	Ref. 12/2016	Sh. Sonu Lohra *V/s* Sacred Heart Convent School, Dhalli Shimla, H.P.	10
8.	Ref 90/2019	Sh. Yash Pal Kanwar *V/s* Medley Pharmaceuticals Ltd. Mumbai.	10
9.	Ref. 181/2018	Sh. Sandeep Singh & Ors *V/s* M/s Agriking Tractor (P) Ltd. Nalagarh, Solan, H.P.	10
10.	Ref. 76/2018	Sh. Munshi Ram *V/s* M/s Astral Poly Technic Limited, Baddi, Distt Solan, H.P.	10
11.	Ref. 32/2010	Contract Labour Union *V/s* M/s Eicher Tractor Limited Parwanoo, Solan & Anr.	10

By order,
NISHA SINGH, IAS
Addl. Chief. Secretary (Lab. & Emp.).

Chakra Bahadur

V/s

The General Manager-HOP, HPPCL Reckong peo and Ors.

03.06.2019

Present: None for petitioner.
Sh. Manoj Chauhan, Ld. Csl. for respondent No.1.
Sh. Naresh Sharma, Ld. Csl. for respondent No. 2 &3.

Thrice notices have been issued to the petitioner but none has put in appearance till date. On the last occasion *i.e.* 22.04.2019, while issuing fresh notice through registered post,

tracking report was also sought from the postal department. As per the report, the petitioner stands duly served. However, none has put in appearance. Seemingly the petitioner is not interested to prosecute the lis any further.

The perusal of the reference further shows that the address of the petitioner is reflected as C/o STKHEP workers union, Powari, District Kinnaur, H.P. The permanent address of the workman is not reflected in the reference. Service has been duly effect on the address reflected in the reference. This court has no mechanism to seek the correct address of the petitioner, except from the reference. Strangely, the permanent address of the workman has not been reflected in the reference. It is not only difficult, nay impossible to serve the petitioner on the aforesaid address. Despite best efforts the petitioner has been served on the address reflected which admittedly is not the permanent address of the petitioner/workman. To say the least, the concerned quarters and the appropriate government would be well advised to at least reflect the permanent addresses of the workmen in all the references sent to this court for adjudication. The flaw has been noticed in many references. The petitioner never comes to be served and the entire exercise ends up in futility.

The petitioner though stands duly served on the address provided by the appropriate government as per the reference, but seemingly it is not the correct and complete address of the petitioner. There is no mechanism with this court to get the address of the petitioner, but from the reference. It is thus ordered to be dismissed for want of better particulars. Ordered accordingly. Let a copy of this order be sent to the appropriate government for publication in the official gazette and also for further necessary action. File, after completion be consigned to records.

Announced
03.06.2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Labour Court, Shimla.

Santa Kumar

V/s

The General Manager-HOP, HPPCL Reckong peo and Ors.

03.06.2019

Present: None for petitioner.
Sh. Manoj Chauhan, Ld. Csl. for respondent No.1.
Sh. Naresh Sharma, Ld. Csl. for respondent No. 2 &3.

Thrice notices have been issued to the petitioner but none has put in appearance till date. On the last occasion *i.e.* 22.04.2019, while issuing fresh notice through registered post, tracking report was also sought from the postal department. As per the report, the petitioner stands duly served. However, none has put in appearance. Seemingly the petitioner is not interested to prosecute the lis any further.

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Announced
03.06.2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Labour Court, Shimla.

Bikash Kumar

V/s

The General Manager-HOP, HPPCL Reckong peo and Ors.

03.06.2019

Present: None for petitioner.
Sh. Manoj Chauhan, Ld. Csl. for respondent No-1.
Sh. Naresh Sharma, Ld. Csl. for respondent No-2 &3.

Thrice notices have been issued to the petitioner but none has put in appearance till date. On the last occasion *i.e.* 22.04.2019, while issuing fresh notice through registered post, tracking report was also sought from the postal department. As per the report, the petitioner stands duly served. However, none has put in appearance. Seemingly the petitioner is not interested to prosecute the lis any further.

The perusal of the reference further shows that the address of the petitioner is reflected as C/o STKHEP workers union, Powari, District Kinnaur, H.P. The permanent address of the workman is not reflected in the reference. Service has been duly effect on the address reflected

in the reference. This court has no mechanism to seek the correct address of the petitioner, except from the reference. Strangely, the permanent address of the workman has not been reflected in the reference. It is not only difficult, nay impossible to serve the petitioner on the aforesaid address. Despite best efforts the petitioner has been served on the address reflected which admittedly is not the permanent address of the petitioner/workman. To say the least, the concerned quarters and the appropriate government would be well advised to at least reflect the permanent addresses of the workmen in all the references sent to this court for adjudication. The flaw has been noticed in many references. The petitioner never comes to be served and the entire exercise ends up in futility.

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Announced
03.06.2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Labour Court, Shimla.

Opender Budha

V/s

The General Manager-HOP, HPPCL Reckong peo and Ors.

03.06.2019

Present: None for petitioner.
Sh. Manoj Chauhan, Ld. Csl. for respondent No-1.
Sh. Naresh Sharma, Ld. Csl. for respondent No-2 &3.

Thrice notices have been issued to the petitioner but none has put in appearance till date. On the last occasion *i.e.* 22.04.2019, while issuing fresh notice through registered post, tracking report was also sought from the postal department. As per the report, the petitioner stands duly served. However, none has put in appearance. Seemingly the petitioner is not interested to prosecute the lis any further.

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address. Despite best efforts the petitioner has been served on the address reflected which admittedly is not the permanent address of the petitioner/workman. To say the least, the concerned quarters and the appropriate government would be well advised to at least reflect the permanent addresses of the workmen in all the references sent to this court for adjudication. The flaw has been noticed in many references. The petitioner never comes to be served and the entire exercise ends up in futility.

The petitioner though stands duly served on the address provided by the appropriate government as per the reference, but seemingly it is not the correct and complete address of the petitioner. There is no mechanism with this court to get the address of the petitioner, but from the reference. It is thus ordered to be dismissed for want of better particulars. Ordered accordingly. Let a copy of this order be sent to the appropriate government for publication in the official gazette and also for further necessary action. File, after completion be consigned to records.

Announced
03.06.2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 08 of 2016

Instituted on 27.2.2016

Decided on 12.6.2019

Monu Singh S/o Shri Surinder Singh, aged about 25 years, presently unemployed, R/o Servant Quarter Near Hari Niwas building, Longwood, Shimla, H.P. . .*Petitioner.*

The Principal, Sacred Heart Convent School, Fleur-de-lys, Dhalli, Shimla-12, H.P.
. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Hitender Thakur, Advocate.
For respondent : Shri Rahul Mahajan, Advocate.

AWARD

The following reference was received for adjudication from the appropriate government:

"Whether termination of the services of Shri Monu Singh S/o Shri Surinder Singh, Near Sacred Heart Convent School, Dhalli, Shimla-12 by the Principal, Sacred Heart Convent School, Fleur-de-Lys, Dhalli, Shimla-12 *w.e.f.* 02.02.2015 allegedly without

complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved worker is entitled to from the above employer/school management?"

2. The seminal facts necessary to be re-capitulated are that the petitioner came to be engaged as daily waged worker/sweeper by the respondent on 1.10.2010. He continued working as such till 2.2.2015 when the services of the petitioner are alleged to have been illegally retrenched, arbitrarily and with a malafide intention just to harass the petitioner.

3. Per the petitioner his service conditions were illegally and arbitrarily changed as initially he was employed on contract basis up to 31.12.2011. Thereafter he was given a temporary appointment till 31.3.2013. Thereafter his period of probation was extended *w.e.f.* 1.4.2013 to 31.3.2014 and from 1.4.2014 to 31.3.2015, despite the fact that the prescribed period of two years already stood completed by the petitioner from the date of his initial engagement *i.e.* 1.1.2010.

4. The petitioner has discharged his duties to the best of his ability and to the entire satisfaction of his superiors. He has completed more than 240 days in each calendar year and more particularly in the preceding twelve months of his illegal termination.

5. It is also the case of the petitioner that on 14.10.2014, the petitioner had raised an industrial dispute through the union namely "All fourth class workers and democratic members of Sacred Heart Convent School", Dhalli, Shimla. They raised a dispute regarding their working conditions and other demands at the work place and for the non-implementation of labour laws. During the pendency of the aforesaid demands, all of a sudden on 2.2.2015, the services of the petitioner were terminated without assigning any reason. The termination is stated to be not only voilative of Articles 14, 16 and 311 of the Constitution of India but also against the mandatory provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

6. The petitioner thus prays that the order of termination dated 2.6.2016 be quashed and the respondent may be directed to re-engage the petitioner with effect from the date of his illegal termination along-with full back-wages and interest @ 18% per annum with all consequential benefits.

7. While contesting the claim the respondent has *inter-alia* raised preliminary objections *vis-a-vis* maintainability. It is the contention of the respondent that the claim is neither competent nor maintainable as the petitioner has concealed true and material facts from this Court. His services were dispensed with *w.e.f.* 3.2.2015 *vide* letter dated 2.2.2015 and he is gainfully employed and earning between ₹ 7,000/- to ₹ 10,000/- per month.

8. On merits, it is the case of the respondent that the petitioner was appointed on 1.3.2011 for a fixed term till 31.12.2011 on a monthly salary of ₹ 4500/-. He was again appointed from 1.4.2012 to 31.3.2013 for a fixed term on a monthly salary of ₹ 5950/-. The appointment of the petitioner on fixed term basis was as per the provisions of section 2(oo)(bb) of the Act. Thereafter the petitioner was appointed on probation basis *w.e.f.* 1.4.2013 to 31.3.2014. This probation period was thereafter extended from 1.4.2014 to 31.3.2015. The petitioner accepted the appointment on temporary/fixed term basis and thereafter on probation. The same have been placed on record by the respondent.

9. Further, per the respondent the appointment of the petitioner was governed by clauses 2 and 7 of the appointment letter dated 1.4.2013 wherein the petitioner was to comply with all the

rules and regulations of the Society and his appointment was terminable without assigning any reason after giving one month's notice or payment of one month salary in lieu thereof.

10. On 3.2.2015, the petitioner was on probation and his services were discharged in terms of the appointment letter and the rules and regulations of the Society. Per the respondent no provisions of the Act have been flouted. The petitioner having completed 240 days is totally wrong and incorrect as the petitioner was first appointed on fixed term basis and thereafter he was on probation when his services came to be discharged *w.e.f.* 3.2.2015.

11. The respondents have also laid emphasis on rule 2.14 and 2.15 of the service conditions, Rules of Conduct and Discipline for employees of the institution of Sacred heart Education Society which *inter-alia* envisaged that all employees other than those appointed on temporary basis will be appointed in the first instance on probation for a period of one year (twelve months) and the period could be extended by another one year and that the appointment of probation may be terminated at any time by either party by giving one month's notice in writing or payment of one month's salary in lieu of the notice. On 2.2.2015, a cheque of ₹ 6982/- as one month's notice pay had accordingly been issued to the petitioner.

12. In relation to the demand dated 14.10.2014, submitted by the Class-IV employees of the Secret Heard Convent School, it is averred by the respondent that a detailed reply to the charter of demand had been submitted by the respondent on 28.2.2015. It is further averred that there was thus no violation of sections 25-G and 25-H of the Act. The respondent thus prayed that the reference be dismissed being devoid of any merits.

13. While filing rejoinder, the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

1. I notice that on 22.7.2017, the following issues came to be framed by my Learned Predecessor:

1. Whether the termination of the services of the petitioner *w.e.f.* 2.2.2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . . *OPP.*

2. If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petition is not maintainable as alleged? . .*OPR.*

4. Relief:

15. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:—

Issue No. 1 :	Yes.
Issue No. 2 :	Entitled to lump sum compensation per operative part of the award.
Issue No. 3 :	No.
Relief:	Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 2 :

16. Both these issues are being taken up together as they are correlated and intermingled.

17. While the petitioner assails his termination being in violation of the provisions of the Act and as such illegal and unjustified, in short the case set up by the respondent is that the termination of the petitioner cannot be said to be "retrenchment" as he was initially working on contractual basis and thereafter while on probation, the petitioner's services were discharged in terms of the appointment letter and the Rules and Regulations vogue *w.e.f.* 3.2.2015.

18. In this behalf the case of the respondent is that the petitioner initially came to be appointed on 1.3.2011 for a fixed term on a monthly salary of ₹ 4500/-. The contract was till 31.12.2011. He was again appointed from 1.4.2012 to 31.3.2013. Thereafter, he was appointed on probation *w.e.f.* 1.4.2013 to 31.4.2014, which was again extended from 1.4.2014 to 31.3.2015. As per the Rules of the respondent, more particularly Rule 2.14 and 2.15, the probation of the petitioner could have been extended by one year and the appointment terminated during this period by giving one month's notice in writing or on payment of one month's salary in lieu thereof, and the same have been paid.

19. The two pronged attack of the respondent thus is that not only is the action of the respondent protected by the provisions of section 2(oo)(bb) of the Act, but, since the petitioner was on probation his services were discharged *w.e.f.* 3.2.2015. It cannot fall within the definition of "retrenchment" and hence the termination cannot be said to bad in the eyes of law.

20. Per contra, it is the contention of the petitioner that the respondent has resorted to unfair labour practices as the petitioner has not been employed on casual or temporary basis but was allowed to continue for years, as such, and that too with the object of depriving him of the status and privileges of a permanent employee. This action of the respondent itself is in derogation to the provisions of clause 10 of Schedule V of the Act.

21. The perusal of the evidence and record undoubtedly shows that the petitioner had been working with the respondent from 1.3.2011 and continued working as such till 3.2.2015. The petitioner thus admittedly worked uninterruptedly for at least four years. Even, RW-2 Ms. Girmeet Sethi has admitted in her cross-examination that there was no break in the service of the petitioner right from his initial appointment. It is thus apparent that the petitioner was not a casual or a seasonal worker. He was working with the respondent school uninterruptedly, though, initially on contract till 31.3.2013 *i.e.* for two years and thereafter was put on probation. The letters Ex. R-1 and Ex. R-2 also show that initially the petitioner was appointed on contract basis for a fixed term, however, thereafter from 2013 he was appointed on probation which was extended till 31.3.2015 as is clear from Exs. R-3 and R-4. The extract of the Rules of the respondent society (Ex. RW-2/C) no doubt envisages that a probationer can be terminated at any time, merely by issuing one month's notice or providing one month's pay in lieu thereof and that the probation period was extendable by one year, but, it was to be applicable to those employees who were appointed in the first instance as probationers. Admittedly, prior to the probation the petitioner had been working on fixed term basis since 2011. It is thus clear that the petitioner had put in four years of uninterrupted service as Class-IV with the respondent school. Judged by the nature of work which the petitioner was undertaking, it can well be presumed that the work was of a permanent nature and the respondents were indeed resorting to contractual employment just to frustrate the rights of the petitioner.

22. In a similar situation our **own Hon'ble High Court in Manoj Kumar Sharma** Vs. **HRTC and another, 2007 Lab. IC 3308**, has held that in such circumstances the case will not fall under section 2(oo)(bb) of the Act and will be covered under the expression "retrenchment". Such acts of engaging workmen by giving them fictional breaks was further held not bonafide.

23. Not only this subsequently, the Hon'ble Supreme Court of India in **Sudershan Rajpoot** Vs. **Utter Pradesh State Road Transport Corporation (2015) 2 SCC 317**, has further held that a workman engaged on contractual basis for more than three years and having rendered more than 240 days of service in a calendar year until his termination and yet being engaged on contractual basis is statutorily prohibited as it amounts to unfair labour practice as defined under section 2 (r) read-with section 25-T and 25-O of the Act.

24. Even otherwise clause-X of the 5th schedule of the Act envisages that if an employer employees workmen as "badlies, casuals or temporaries and continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen, the action would squarely falls within the fore corners of "unfair labour practice", defined under section 2(ra) of the Act.

25. Keeping in view the mandate of the law discussed hereinabove and the law laid down by the Hon'ble Supreme Court, it is more than clear that the arguments of the respondents that the reference is not maintainable as the petitioner specifically falls under the provisions of section 2(oo)(bb) of the Act cannot be countenanced.

26. It is also vociferously urged by the learned counsel for the respondent that since the petitioner was working on probation as such his termination may not amount to retrenchment and in this behalf he has placed reliance on the judgments of the Hon'ble Supreme Court in **Life Insurance Corporation of India and Another** Vs. **Raghavendra Seshagiri Rao Kulkarni, (1997) 8 SCC 461, Head Master Lawrence School, Lovedale** Vs. **Jayanthi Raghu and Another (2012) 4 SCC 793**, **Rajasthan State Road Transport Corpn. And others** Vs. **Zakir Hussain (2005) 7 SCC 447, Municipal Council Samrala** Vs. **Rajkumar (2006) 81 and Bhavnagar Municipal Corporation** Vs. **Salimbhai Umarbhai Mansuri (2013) 14 SCC 456**.

27. I am afraid the ratio of the aforesaid judgments do not augur to the benefit of the respondent as in the present case it is not a case of a probationer having been discharged simplicitor and as such the appointment of the petitioner coming to an end by efflux of time and as such having the protection of section 2-oo of the Act.

28. As detailed hereinabove the respondent had already appointed the petitioner in the year 2011 and continued him on fixed term basis uninterruptedly for two years and thereafter the petitioner was put on probation. Had the petitioner been appointed on probation in the very inception and thereafter been discharged, apparently the action of the respondent could not have been faulted with. Even, as per their own Rules, probation was applicable only to those employees was appointed in the first instance on probation. The petitioner had already been working with the respondent since March 2011 as is clear from Ex. R-1 and Ex. R-2. Thus seemingly the respondent had been using the contracts as a camouflage to deprive the petitioner of continuity in service. The termination of the petitioner thus was nothing but as case of "retrenchment".

29. Admittedly, the petitioner had worked continuously and uninterruptedly for four years. He has completed more than 240 days not only in all the calendar years but even in the twelve months preceding his termination. It is admitted by RW-2. It also transpires from the record that the respondent school filled the vacancies after doing away with the services of the

petitioner. It is also affirmed by RW-2 in her cross-examination. That being so, the action of the respondent is indeed voilative of sections 25-F and 25-H of the Act as neither any notice under section 25-F nor any compensation has been offered to the petitioner nor the petitioner has been offered re-employment as a retrenched worker.

30. The termination of the petitioner having been held to be without compliance of sections 25-F and 25-H of the Act, the next question which thus gains significance is as to what relief the petitioner is entitled to.

31. Recent trends, more particularly after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as is required to be mandatorily paid under section 25-F and not re-employing the petitioner as a retrenched employee under the provisions of section 25-H. The interest of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd.** Vs. **Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives** Vs. **General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur** Vs. **Prashant Manikrao Kubitkar (2108) 12 SCC 294**.

32. In view of the aforesaid, it would be just and proper that an amount of ₹ 75,000/- (₹ Seventy Five Thousand only) is ordered to be paid as compensation to the petitioner in lieu of his illegal termination. The amount has been calculated keeping in view the number of years put in by the petitioner. The petitioner would have been entitled to almost about ₹ 25000/- (₹ Twenty Five Thousand only) as compensation under section 25-F of the Act. The rest of the amount would be payable on account of the illegality committed by the respondent and for having made the petitioner go through the ordeal of the present litigation. Ordered accordingly. The issues thus, are decided in favour of the petitioner and against the respondent.

Issue No. 3 :

33. In view of the discussion held hereinabove in realtion to the non applicability of the provisions of section 2(oo) (bb), it is more than clear that the claim is competent and maintainable. Nothing contrary has been stated or proved. The issue is thus decided in favour of the petitioner and against the respondent.

Relief :

For the foregoing reasons discussed hereinabove supra, the respondent is directed to pay an amount of ₹ 75,000/- (₹ Seventy Five Thousand only) to the petitioner as compensation in lieu of his illegal termination. The amount shall be paid within sixty days of this order failing which the respondent shall pay interest @ 9% per annum till the realization of the amount. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today this 12th day of June, 2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Ref. No. 14 of 2016

Instituted on 14.3.2016

Decided on 12.6.2019

Sumitra Devi w/o Shri Roshan Lal r/o Hem Kunj, Near Tara Cottage, Lower Cemetery, Shimla, HP. . .*Petitioner.*

The Principal, Sacred Heart Convent School, Fleur-de-lys, Dhalli, Shimla-12, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Hitender Thakur, Advocate.

For respondent : Shri Rahul Mahajan, Advocate.

AWARD

The following reference was received for adjudication from the appropriate government:

"Whether termination of the services of Smt. Sumitra Devi w/o Shri Roshan Lal r/o Hem Kunj, Near Tara Cottage, Lower Cemetery, Shimla, H.P. by the Principal, Sacred Heart Convent School, Fleur-de-Lys, Dhalli, Shimla-12 *w.e.f.* 02.02.2015 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved worker is entitled to from the above employer/school management?"

2. The seminal facts necessary to be re-capitulated are that the petitioner came to be engaged as daily waged worker/Aaya by the respondent on 1.10.2010. She continued working as such till 2.2.2015 when the services of the petitioner are alleged to have been illegally retrenched, arbitrarily and with a malafide intention just to harass the petitioner.

3. Per the petitioner her service conditions were illegally and arbitrarily changed as initially she was employed on contract basis up to 31.12.2011. Thereafter she was given a temporary appointment till 31.3.2013. Thereafter his period of probation was extended *w.e.f.* 1.4.2013 to 31.3.2014 and from 1.4.2014 to 31.3.2015, despite the fact that the prescribed period of two years already stood completed by the petitioner from the date of her initial engagement *i.e* 1.1.2010.

4. The petitioner has discharged her duties to the best of his ability and to the entire satisfaction of his superiors. She has completed more than 240 days in each calendar year and more particularly in the preceding twelve months of her illegal termination.

5. It is also the case of the petitioner that on 14.10.2014, the petitioner had raised an industrial dispute through the union namely "All fourth class workers and democratic members of Sacred Heart Convent School", Dhalli, Shimla. They raised a dispute regarding their working

conditions and other demands at the work place and for the non-implementation of labour laws. During the pendency of the aforesaid demands, all of a sudden on 2.2.2015, the services of the petitioner were terminated without assigning any reason. The termination is stated to be not only voilative of Articles 14, 16 and 311 of the Constitution of India but also against the mandatory provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

6. The petitioner thus prays that the order of termination dated 2.6.2016 be quashed and the respondent may be directed to re-engage the petitioner with effect from the date of her illegal termination along-with full back-wages and interest @ 18% per annum with all consequential benefits.

7. While contesting the claim the respondent has *inter-alia* raised preliminary objections vis-à-vis maintainability. It is the contention of the respondent that the claim is neither competent nor maintainable as the petitioner has concealed true and material facts from this Court. Her services were dispensed with *w.e.f.* 3.2.2015 *vide* letter dated 2.2.2015 and she is gainfully employed and earning between ₹ 7,000/- to ₹ 10,000/- per month.

8. On merits, it is the case of the respondent that the petitioner was appointed on 1.4.2011 for a fixed term till 28.2.2012 on a monthly salary of ₹ 5950/-. She was again appointed from 1.4.2012 to 31.3.2013 for a fixed term on a monthly salary of ₹ 6930/-. The appointment of the petitioner on fixed term basis was as per the provisions of section 2(oo)(bb) of the Act. Thereafter the petitioner was appointed on probation basis *w.e.f.* 1.4.2013 to 31.3.2014. This probation period was thereafter extended from 1.4.2014 to 31.3.2015. The petitioner accepted the appointment on temporary/fixed term basis and thereafter on probation. The same have been placed on record by the respondent.

9. Further, per the respondent the appointment of the petitioner was governed by clauses 2 and 7 of the appointment letter dated 1.4.2013 wherein the petitioner was to comply with all the rules and regulations of the Society and her appointment was terminable without assigning any reason after giving one month's notice or payment of one month salary in lieu thereof.

10. On 3.2.2015, the petitioner was on probation and her services were discharged in terms of the appointment letter and the rules and regulations of the Society. Per the respondent no provisions of the Act have been flouted. The petitioner having completed 240 days is totally wrong and incorrect as the petitioner was first appointed on fixed term basis and thereafter she was on probation when her services came to be discharged *w.e.f.* 3.2.2015.

11. The respondents have also laid emphasis on rule 2.14 and 2.15 of the service conditions, Rules of Conduct and Discipline for employees of the institution of Sacred heart Education Society which inter-alia envisaged that all employees other than those appointed on temporary basis will be appointed in the first instance on probation for a period of one year (twelve months) and the period could be extended by another one year and that the appointment of probation may be terminated at any time by either party by giving one month's notice in writing or payment of one month's salary in lieu of the notice. On 2.2.2015, a cheque of ₹ 6982/- as one month's notice pay had accordingly been issued to the petitioner.

12. In relation to the demand dated 14.10.2014, submitted by the Class-IV employees of the Secret Heard Convent School, it is averred by the respondent that a detailed reply to the charter of demand had been submitted by the respondent on 28.2.2015. It is further averred that there was thus no violation of sections 25-G and 25-H of the Act. The respondent thus prayed that the reference be dismissed being devoid of any merits.

13. While filing rejoinder, the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

14. I notice that on 28.3.2017, the following issues came to be framed by my Learned Predecessor:

1. Whether the termination of the services of the petitioner *w.e.f.* 2.2.2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petition is not maintainable as alleged? . .*OPR.*

4. Relief:

15. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:—

Issue No. 1 : Yes.

Issue No. 2 : Entitled to lump sum compensation per operative part of the award.

Issue No. 3 : No.

Relief: Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 2 :

16. Both these issues are being taken up together as they are correlated and intermingled.

17. While the petitioner assails his termination being in violation of the provisions of the Act and as such illegal and unjustified, in short the case set up by the respondent is that the termination of the petitioner cannot be said to be "retrenchment" as she was initially working on contractual basis and thereafter while on probation, the petitioner's services were discharged in terms of the appointment letter and the Rules and Regulations vogue *w.e.f.* 3.2.2015.

18. In this behalf the case of the respondent is that the petitioner initially came to be appointed on 1.4.2011 for a fixed term on a monthly salary of ₹ 5950/-. The contract was till 31.12.2011. She was again appointed from 1.4.2012 to 31.3.2013. Thereafter, she was appointed on probation *w.e.f.* 1.4.2013 to 31.4.2014, which was again extended from 1.4.2014 to 31.3.2015. As per the Rules of the respondent, more particularly Rule 2.14 and 2.15, the probation of the petitioner could have been extended by one year and the appointment terminated during this period by giving one month's notice in writing or on payment of one month's salary in lieu thereof, and the same have been paid.

19. The two pronged attack of the respondent thus is that not only is the action of the respondent protected by the provisions of section 2(oo)(bb) of the Act, but, since the

petitioner was on probation her services were discharged *w.e.f.* 3.2.2015. It cannot fall within the definition of "retrenchment" and hence the termination cannot be said to bad in the eyes of law.

20. Per contra, it is the contention of the petitioner that the respondent has resorted to unfair labour practices as the petitioner has not been employed on casual or temporary basis but was allowed to continue for years, as such, and that too with the object of depriving her of the status and privileges of a permanent employee. This action of the respondent itself is in derogation to the provisions of clause 10 of Schedule V of the Act.

21. The perusal of the evidence and record undoubtedly shows that the petitioner had been working with the respondent from 1.3.2011 and continued working as such till 3.2.2015. The petitioner thus admittedly worked uninterruptedly for at least four years. Even, RW-2 Ms. Girmeet Sethi has admitted in her cross-examination that there was no break in the service of the petitioner right from her initial appointment. It is thus apparent that the petitioner was not a casual or a seasonal worker. She was working with the respondent school uninterruptedly, though, initially on contract till 31.3.2013 *i.e* for two years and thereafter was put on probation. The letters Ex. R-1 and Ex. R-2 also show that initially the petitioner was appointed on contract basis for a fixed term, however, thereafter from 2013 she was appointed on probation which was extended till 31.3.2015 as is clear from Exs. R-3 and R-4. The extract of the Rules of the respondent society (Ex. RW-2/C) no doubt envisages that a probationer can be terminated at any time, merely by issuing one month's notice or providing one month's pay in lieu thereof and that the probation period was extendable by one year, but, it was to be applicable to those employees who were appointed in the first instance as probationers. Admittedly, prior to the probation the petitioner had been working on fixed term basis since 2011. It is thus clear that the petitioner had put in four years of uninterrupted service as Class-IV with the respondent school. Judged by the nature of work which the petitioner was undertaking, it can well be presumed that the work was of a permanent nature and the respondents were indeed resorting to contractual employment just to frustrate the rights of the petitioner.

22. In a similar situation our **own Hon'ble High Court in Manoj Kumar Sharma** Vs. **HRTC and another, 2007 Lab. IC 3308**, has held that in such circumstances the case will not fall under section 2(oo)(bb) of the Act and will be covered under the expression "retrenchment". Such acts of engaging workmen by giving them fictional breaks was further held not bonafide.

23. Not only this subsequently, the Hon'ble Supreme Court of India in **Sudershan Rajpoot** Vs. **Utter Pradesh State Road Transport Corporation (2015) 2 SCC 317**, has further held that a workman engaged on contractual basis for more than three years and having rendered more than 240 days of service in a calendar year until her termination and yet being engaged on contractual basis is statutorily prohibited as it amounts to unfair labour practice as defined under section 2 (r) read-with section 25-T and 25-O of the Act.

24. Even otherwise clause-X of the 5th schedule of the Act envisages that if an employer employees workmen as "badlies, casuals or temporaries and continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen, the action would squarely falls within the fore corners of "unfair labour practice", defined under section 2(ra) of the Act.

25. Keeping in view the mandate of the law discussed hereinabove and the law laid down by the Hon'ble Supreme Court, it is more than clear that the arguments of the respondents that the reference is not maintainable as the petitioner specifically falls under the provisions of section 2(oo)(bb) of the Act cannot be countenanced.

26. It is also vociferously urged by the learned counsel for the respondent that since the petitioner was working on probation as such his termination may not amount to retrenchment

and in this behalf he has placed reliance on the judgments of the Hon'ble Supreme Court in **Life Insurance Corporation of India and Another** Vs. **Raghavendra Seshagiri Rao Kulkarni, (1997) 8 SCC 461, Head Master Lawrence School, Lovedale** Vs. **Jayanthi Raghu and Another (2012) 4 SCC 793**, **Rajasthan State Road Transport Corpn. And others** Vs. **Zakir Hussain (2005) 7 SCC 447, Municipal Council Samrala** Vs. **Rajkumar (2006) 81 and Bhavnagar Municipal Corporation** Vs. **Salimbhai Umarbhai Mansuri (2013) 14 SCC 456**.

27. I am afraid the ratio of the aforesaid judgments do not augur to the benefit of the respondent as in the present case it is not a case of a probationer having been discharged simplicitor and as such the appointment of the petitioner coming to an end by efflux of time and as such having the protection of section 2-oo of the Act.

28. As detailed hereinabove the respondent had already appointed the petitioner in the year 2011 and continued her on fixed term basis uninterruptedly for two years and thereafter the petitioner was put on probation. Had the petitioner been appointed on probation in the very inception and thereafter been discharged, apparently the action of the respondent could not have been faulted with. Even, as per their own Rules, probation was applicable only to those employees was appointed in the first instance on probation. The petitioner had already been working with the respondent since March 2011 as is clear from Ex. R-1 and Ex. R-2. Thus seemingly the respondent had been using the contracts as a camouflage to deprive the petitioner of continuity in service. The termination of the petitioner thus was nothing but as case of "retrenchment".

29. Admittedly, the petitioner had worked continuously and uninterruptedly for four years. She has completed more than 240 days not only in all the calendar years but even in the twelve months preceding her termination. It is admitted by RW-2. It also transpires from the record that the respondent school filled the vacancies after doing away with the services of the petitioner. It is also affirmed by RW-2 in her cross-examination. That being so, the action of the respondent is indeed voilative of sections 25-F and 25-H of the Act as neither any notice under section 25-F nor any compensation has been offered to the petitioner nor the petitioner has been offered re-employment as a retrenched worker.

30. The termination of the petitioner having been held to be without compliance of sections 25-F and 25-H of the Act, the next question which thus gains significance is as to what relief the petitioner is entitled to.

31. Recent trends, more particularly after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as is required to be mandatorily paid under section 25-F and not re-employing the petitioner as a retrenched employee under the provisions of section 25-H. The interest of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd.** Vs. **Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives** Vs. **General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur** Vs. **Prashant Manikrao Kubitkar (2108) 12 SCC 294**.

32. In view of the aforesaid, it would be just and proper that an amount of ₹ 75,000/- (₹ Seventy Five Thousand only) is ordered to be paid as compensation to the petitioner in lieu of

her illegal termination. The amount has been calculated keeping in view the number of years put in by the petitioner. The petitioner would have been entitled to almost about ` 25000/- (₹Twenty Five Thousand only) as compensation under section 25-F of the Act. The rest of the amount would be payable on account of the illegality committed by the respondent and for having made the petitioner go through the ordeal of the present litigation. Ordered accordingly. The issues thus, are decided in favour of the petitioner and against the respondent.

Issue No. 3 :

33. In view of the discussion held hereinabove in realtion to the non applicability of the provisions of section 2(oo) (bb), it is more than clear that the claim is competent and maintainable. Nothing contrary has been stated or proved. The issue is thus decided in favour of the petitioner and against the respondent.

Relief :

For the foregoing reasons discussed hereinabove supra, the respondent is directed to pay an amount of ₹ 75,000/- (₹ Seventy Five Thousand only) to the petitioner as compensation in lieu of her illegal termination. The amount shall be paid within sixty days of this order failing which the respondent shall pay interest @ 9% per annum till the realization of the amount. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today this 12th day of June, 2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 12 of 2016.

Instituted on 4.3.2016.

Decided on 12.6.2019.

Sonu Lohra S/o Shri Sahdev Lohra, Thakur Niwas R/o Jubrridhar, Dhalli Shimla- 12.
. .*Petitioner.*

The Principal, Sacred Heart Convent School, Fleur-de-lys, Dhalli, Shimla-12, H.P.
. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Hitender Thakur, Advocate.

For respondent : Shri Rahul Mahajan, Advocate.

AWARD

The following reference was received for adjudication from the appropriate government:

"Whether termination of the services of Shri Sonu Lohra s/o Shri Sahdev Lohra, Thakur Niwas r/o Jubrridhar, Dhalli Shimla-12 by the Principal, Sacred Heart Convent School, Fleur-de-Lys, Dhalli, Shimla-12 *w.e.f.* 02.02.2015 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved worker is entitled to from the above employer/school management?"

2. The seminal facts necessary to be re-capitulated are that the petitioner came to be engaged as daily waged worker/sweeper by the respondent on 09.10.2011. He continued working as such till 2.2.2015 when the services of the petitioner are alleged to have been illegally retrenched, arbitrarily and with a malafide intention just to harass the petitioner.

3. Per the petitioner his service conditions were illegally and arbitrarily changed as initially he was employed on contract basis up to 28.2.2013. Thereafter he was given a temporary appointment till 31.3.2014. Thereafter his period of probation was extended *w.e.f.* 1.4.2014 to 31.3.2015, despite the fact that the prescribed period of two years already stood completed by the petitioner from the date of his initial engagement *i.e.* 9.10.2011.

4. The petitioner has discharged his duties to the best of his ability and to the entire satisfaction of his superiors. He has completed more than 240 days in each calendar year and more particularly in the preceding twelve months of his illegal termination.

5. It is also the case of the petitioner that on 14.10.2014, the petitioner had raised an industrial dispute through the union namely "All fourth class workers and democratic members of Sacred Heart Convent School", Dhalli, Shimla. They raised a dispute regarding their working conditions and other demands at the work place and for the non-implementation of labour laws. During the pendency of the aforesaid demands, all of a sudden on 2.2.2015, the services of the petitioner were terminated without assigning any reason. The termination is stated to be not only voilative of Articles 14, 16 and 311 of the Constitution of India but also against the mandatory provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

6. The petitioner thus prays that the order of termination dated 2.2.2015 be quashed and the respondent may be directed to re-engage the petitioner with effect from the date of his illegal termination along-with full back-wages and interest @ 18% per annum with all consequential benefits.

7. While contesting the claim the respondent has *inter-alia* raised preliminary objections *vis-à-vis* maintainability. It is the contention of the respondent that the claim is neither competent nor maintainable as the petitioner has concealed true and material facts from this Court. His services were dispensed with *w.e.f.* 3.2.2015 *vide* letter dated 2.2.2015 and he is gainfully employed and earning between ₹ 7,000/- to ₹ 10,000/- per month.

8. On merits, it is the case of the respondent that the petitioner was appointed on 1.4.2012 for a fixed term till 28.2.2013 on a monthly salary of ₹ 4500/-. He was again appointed from 1.4.2013 to 31.3.2014 for a fixed term on a monthly salary of ₹ 6930/-. The appointment of the petitioner on fixed term basis was as per the provisions of section 2(oo)(bb) of

the Act. Thereafter the petitioner was appointed on probation basis *w.e.f.* 1.4.2014 to 31.3.2015. The petitioner accepted the appointment on temporary/fixed term basis and thereafter on probation. The same have been placed on record by the respondent.

9. Further, per the respondent the appointment of the petitioner was governed by clauses 2 and 7 of the appointment letter dated 1.4.2013 wherein the petitioner was to comply with all the rules and regulations of the Society and his appointment was terminable without assigning any reason after giving one month's notice or payment of one month salary in lieu thereof.

10. On 3.2.2015, the petitioner was on probation and his services were discharged in terms of the appointment letter and the rules and regulations of the Society. Per the respondent no provisions of the Act have been flouted. The petitioner having completed 240 days is totally wrong and incorrect as the petitioner was first appointed on fixed term basis and thereafter he was on probation when his services came to be discharged *w.e.f.* 3.2.2015.

11. The respondents have also laid emphasis on rule 2.14 and 2.15 of the service conditions, Rules of Conduct and Discipline for employees of the institution of Sacred heart Education Society which *inter-alia* envisaged that all employees other than those appointed on temporary basis will be appointed in the first instance on probation for a period of one year (twelve months) and the period could be extended by another one year and that the appointment of probation may be terminated at any time by either party by giving one month's notice in writing or payment of one month's salary in lieu of the notice. On 2.2.2015, a cheque of ₹ 6982/- as one month's notice pay had accordingly been issued to the petitioner.

12. In relation to the demand dated 14.10.2014, submitted by the Class-IV employees of the Secret Heard Convent School, it is averred by the respondent that a detailed reply to the charter of demand had been submitted by the respondent on 28.2.2015. It is further averred that there was thus no violation of sections 25-G and 25-H of the Act. The respondent thus prayed that the reference be dismissed being devoid of any merits.

13. While filing rejoinder, the petitioner controverted the averments in the reply and further reiterated those in the statement of claim.

14. I notice that on 21.11.2016, the following issues came to be framed by my Learned Predecessor:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 2.2.2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the present petition is neither competent nor maintainable as alleged? . .*OPR.*

4. Relief:

15. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:—

Issue No. 1 Yes.

Issue No. 2	Entitled to lump sum compensation per operative part of the award.
Issue No. 3	No.
Relief:	Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 2 :

16. Both these issues are being taken up together as they are correlated and intermingled.

17. While the petitioner assails his termination being in violation of the provisions of the Act and as such illegal and unjustified, in short the case set up by the respondent is that the termination of the petitioner cannot be said to be "retrenchment" as he was initially working on contractual basis and thereafter while on probation, the petitioner's services were discharged in terms of the appointment letter and the Rules and Regulations vogue *w.e.f.* 3.2.2015.

18. In this behalf the case of the respondent is that the petitioner initially came to be appointed on 1.4.2012 for a fixed term on a monthly salary of ₹ 4500/-. The contract was till 28.2.2013. He was again appointed from 1.4.2013 to 31.3.2014. Thereafter, he was appointed on probation *w.e.f.* 1.4.2014 to 31.4.2015. As per the Rules of the respondent, more particularly Rule 2.14 and 2.15, the probation of the petitioner could have been extended by one year and the appointment terminated during this period by giving one month's notice in writing or on payment of one month's salary in lieu thereof, and the same have been paid.

19. The two pronged attack of the respondent thus is that not only is the action of the respondent protected by the provisions of section 2(oo)(bb) of the Act, but, since the petitioner was on probation his services were discharged *w.e.f.* 3.2.2015. It cannot fall within the definition of "retrenchment" and hence the termination cannot be said to bad in the eyes of law.

20. Per contra, it is the contention of the petitioner that the respondent has resorted to unfair labour practices as the petitioner has not been employed on casual or temporary basis but was allowed to continue for years, as such, and that too with the object of depriving him of the status and privileges of a permanent employee. This action of the respondent itself is in derogation to the provisions of clause 10 of Schedule V of the Act.

21. The perusal of the evidence and record undoubtedly shows that the petitioner had been working with the respondent from 1.4.2012 and continued working as such till 3.2.2015. The petitioner thus admittedly worked uninterruptedly for at least three years. Even, RW-2 Ms. Girmeet Sethi has admitted in her cross-examination that there was no break in the service of the petitioner right from his initial appointment. It is thus apparent that the petitioner was not a casual or a seasonal worker. He was working with the respondent school uninterruptedly, though, initially on contract till 31.3.2014 *i.e.* for two years and thereafter was put on probation. The letters Ex. R-1 and Ex. R-2 also show that initially the petitioner was appointed on contract basis for a fixed term, however, thereafter from 2013 he was appointed on probation as is clear from Ex. R- R-4. The extract of the Rules of the respondent society (Ex. RW-2/C) no doubt envisages that a probationer can be terminated at any time, merely by issuing one month's notice or providing one month's pay in lieu thereof and that the probation period was extendable

by one year, but, it was to be applicable to those employees who were appointed in the first instance as probationers. Admittedly, prior to the probation the petitioner had been working on fixed term basis since 2012. It is thus clear that the petitioner had put in three years of uninterrupted service as Class-IV with the respondent school. Judged by the nature of work which the petitioner was undertaking, it can well be presumed that the work was of a permanent nature and the respondents were indeed resorting to contractual employment just to frustrate the rights of the petitioner.

22. In a similar situation our **own Hon'ble High Court in Manoj Kumar Sharma** Vs. **HRTC and another, 2007 Lab. IC 3308**, has held that in such circumstances the case will not fall under section 2(oo)(bb) of the Act and will be covered under the expression "retrenchment". Such acts of engaging workmen by giving them fictional breaks was further held not bonafide.

23. Not only this subsequently, the Hon'ble Supreme Court of India in **Sudershan Rajpoot** Vs. **Utter Pradesh State Road Transport Corporation (2015) 2 SCC 317**, has further held that a workman engaged on contractual basis for more than three years and having rendered more than 240 days of service in a calendar year until his termination and yet being engaged on contractual basis is statutorily prohibited as it amounts to unfair labour practice as defined under section 2 (r) read-with section 25-T and 25-O of the Act.

24. Even otherwise clause-X of the 5th schedule of the Act envisages that if an employer employees workmen as "badlies, casuals or temporaries and continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen, the action would squarely falls within the fore corners of "unfair labour practice", defined under section 2(ra) of the Act.

25. Keeping in view the mandate of the law discussed hereinabove and the law laid down by the Hon'ble Supreme Court, it is more than clear that the arguments of the respondents that the reference is not maintainable as the petitioner specifically falls under the provisions of section 2(oo)(bb) of the Act cannot be countenanced.

26. It is also vociferously urged by the learned counsel for the respondent that since the petitioner was working on probation as such his termination may not amount to retrenchment and in this behalf he has placed reliance on the judgments of the Hon'ble Supreme Court in **Life Insurance Corporation of India and Another** Vs. **Raghavendra Seshagiri Rao Kulkarni, (1997) 8 SCC 461, Head Master Lawrence School, Lovedale Vs. Jayanthi Raghu and Another (2012) 4 SCC 793**, **Rajasthan State Road Transport Corpn. And others** Vs. **Zakir Hussain (2005) 7 SCC 447, Municipal Council Samrala** Vs. **Rajkumar (2006) 81 and Bhavnagar Municipal Corporation** Vs. **Salimbhai Umarbhai Mansuri (2013) 14 SCC 456**.

27. I am afraid the ratio of the aforesaid judgments do not augur to the benefit of the respondent as in the present case it is not a case of a probationer having been discharged simplicitor and as such the appointment of the petitioner coming to an end by efflux of time and as such having the protection of section 2-oo of the Act.

28. As detailed hereinabove the respondent had already appointed the petitioner in the year 2012 and continued him on fixed term basis uninterruptedly for two years and thereafter the petitioner was put on probation. Had the petitioner been appointed on probation in the very inception and thereafter been discharged, apparently the action of the respondent could not have been faulted with. Even, as per their own Rules, probation was applicable only to those employees was appointed in the first instance on probation. The petitioner had already been working with the respondent since April 2012 as is clear from Ex. R-1. Thus seemingly the

respondent had been using the contracts as a camouflage to deprive the petitioner of continuity in service. The termination of the petitioner thus was nothing but as case of "retrenchment".

29. Admittedly, the petitioner had worked continuously and uninterruptedly for three years. He has completed more than 240 days not only in all the calendar years but even in the twelve months preceding his termination. It is admitted by RW-2. It also transpires from the record that the respondent school filled the vacancies after doing away with the services of the petitioner. It is also affirmed by RW-2 in her cross-examination. That being so, the action of the respondent is indeed voilative of sections 25-F and 25-H of the Act as neither any notice under section 25-F nor any compensation has been offered to the petitioner nor the petitioner has been offered re-employment as a retrenched worker.

30. The termination of the petitioner having been held to be without compliance of sections 25-F and 25-H of the Act, the next question which thus gains significance is as to what relief the petitioner is entitled to.

31. Recent trends, more particularly after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as is required to be mandatorily paid under section 25-F and not re-employing the petitioner as a retrenched employee under the provisions of section 25-H. The interest of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd.** Vs. **Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives** Vs. **General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur** Vs. **Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

32. In view of the aforesaid, it would be just and proper that an amount of ₹ 75,000/- (₹ Seventy Five Thousand only) is ordered to be paid as compensation to the petitioner in lieu of his illegal termination. The amount has been calculated keeping in view the number of years put in by the petitioner. The petitioner would have been entitled to almost about ₹ 25000/- (₹ Twenty Five Thousand only) as compensation under section 25-F of the Act. The rest of the amount would be payable on account of the illegality committed by the respondent and for having made the petitioner go through the ordeal of the present litigation. Ordered accordingly. The issues thus, are decided in favour of the petitioner and against the respondent.

Issue No. 3 :

33. In view of the discussion held hereinabove in relation to the non applicability of the provisions of section 2(oo) (bb), it is more than clear that the claim is competent and maintainable. Nothing contrary has been stated or proved. The issue is thus decided in favour of the petitioner and against the respondent.

Relief :

For the foregoing reasons discussed hereinabove supra, the respondent is directed to pay an amount of ₹ 75,000/- (₹ Seventy Five Thousand only) to the petitioner as compensation in lieu of his illegal termination. The amount shall be paid within sixty days of this order failing which the respondent shall pay interest @ 9% per annum till the realization of the amount. Let a

copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today this 12th day of June, 2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

19.6.2019.
Present: Shri Yashpal Kanwar, petitioner in person.

Shri Akhilesh Sharma, ZSN for the respondent.

The parties submitted that they have settled the present dispute, whereby as per mutual understanding the parties have resolved that the respondent shall pay an amount of Rs. 1,50,000/- (Rs. one lakhs fifty thousand only) towards full & final settlement including gratuity and in this behalf a cheque of Rs. 1,17,981/- (Rs. One lakhs seventeen thousand nine hundred eighty one only) has been paid to the petitioner in the Court itself. The respondent agrees to pay the balance amount of Rs. 32,019/- (Rs. Thirty two thousand nineteen only) within a period of one month from today.

In this behalf a settlement pursis has been filed in the Court, which is placed on record along-with the letter issued by Shri Santosh Patole, DGM field HR. In pursuance to the said pursis, Mr. Akhilesh Sharma, ZSN, the representative of the respondent company has handed-over the cheque amounting to Rs. 1,17,981/- (Rs. One lakhs seventeen thousand nine hundred eighty one only) in the Court today itself.

As a sequel to the settlement so arrived, the reference is disposed of as not been pressed. Ordered accordingly. The respondent shall however pay the balance amount of Rs. 32,019/- (Rs. Thirty two thousand nineteen only) within a period of one month from today. The reference is disposed of with the aforesaid directions. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: 19.6.2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Labour Court, Shimla.

21.6.2019.

Vide separate notice, this case is being taken up today.

Present: Petitioner Shri Sandeep Singh in person.

Shri R.K Sharma, AR for the respondent company.

One of the petitioners namely Shri Sandeep Singh is present in Court along-with authorized representation of the respondent company. Both submit that the matter has been amicably resolved amongst the parties. No outstanding dues or issues subsist between the parties, as of now. In this behalf a settlement pursis signed by twenty one workers had also been placed on record. A separate statement of the petitioner Sandeep Singh has been recorded. The petitioner has unequivocally deposed that the workmen have compromised the matter with the respondent and they do not want to press the reference any further.

As a sequel, the reference is dismissed as having not been pressed, the matter having been amicably settled interse the parties. Ordered accordingly. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
21.6.2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Labour Court, Shimla.

21.6.2019.

Vide separate notice, this case is being taken up today.

Present: None for the petitioner.

Shri Rajiv Sharma, Advocate for respondent.

Six opportunities have been afforded to the petitioner to file statement of claim. Despite last and final opportunity granted on 16.11.2018, as a matter of indulgence one final opportunity was granted to the petitioner to file statement of claim, that too subject to costs of Rs. 2000/-. Neither the statement of claim has been filed nor anyone is present on behalf of the petitioner today. Seemingly, the petitioner is not interested to prosecute the lis, as is also evident from the day to day orders passed by this Court till now. The reference is thus dismissed as having not been pressed. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
21.6.2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF CHIRAG BHANU SINGH, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. 3 No. 32 of 2012

Instituted on 14.6.2012

Decided on 24.6.2019

The President and General Secretary, Contract Labour Union (Regn. No. 498) Affiliated to CITU C/o Shri Om Dutt Sahrma, VPO Taksal, Parwanoo, District Solan, HP. . .*Petitioner.*

1. The General Manager/Occupier M/s Eicher Tractor Ltd., Transmission Division (A unit of TAFE Motors Ltd. A wholly owned subsidiary of TAFE) Sector-2 Parwanoo District Solan, HP 173220.

2. Shri Abdul Hamid, Contractor of and c/o M/s Eicher Tractor Ltd., Transmission Division (A unit of TAFE Motors Ltd. A wholly owned subsidiary of TAFE) Sector-2 Parwanoo District Solan, HP 173220. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C Bhardwaj, AR.

For respondent No.1 : Shri Rahul Mahajan, Advocate.

For respondent No. 2 : Shri Kapil Thakur, Advocate.

AWARD

The following reference was received for adjudication from the appropriate government:

"Whether miscellaneous demands of the President and General Secretary, Contract Labour Union (Regn. No. 498) Affiliated to CITU, c/o Shri Om Dutt Sharma, VPO Taksal, Parwanoo District Solan, H.P. as per demand notice dated 3.8.2009 to be fulfilled by i) The General Manager/Occupier, M/s Eicher Tractor Ltd., Transmission Division (A unit of TAFE Motors Ltd. A wholly owned subsidiary of TAFE) Sector-2 Parwanoo District Solan, H.P. 173220. Ii) Shri abdul Hamid Contractor of and c/o M/s Eicher Tractor Ltd., Transmission Division (A unit of TAFE Motors Ltd. A wholly owned subsidiary of TAFE) Sector-2 Parwanoo District Solan, H.P. 173220 are legally justified and maintainable, if yes, what amount of monitory benefits, other facilities, service benefits and compensation the concerned contract workers of above establishment, are entitled to from the above employer/ management?"

2. In accordant to the reference, it is averred in the statement of claim filed by the petitioner union that twenty two workmen, whose names have been appended with, were directly engaged by respondent No.1 *i.e* M/s Eicher Tractor Ltd. and to evade liabilities arising under law started showing the names of these workmen being employed through the contractor. The contractors came and went but these workmen continued working uninterruptedly. They were carrying out work which was perennial in nature. The work as such was outside the scope for which the contract was given to the contractor. They were in fact undertaking manufacturing work

and as such were entitled to the same salary and allowances at par with the directly employed workmen by respondent No.1 company.

3. The contract licence had been obtained only for loading and unloading work and it was not granted to carry out the work of perennial nature. Therefore, there undoubtedly exists relationship of an employer and an employee between these twenty two workmen and respondent no.1 company.

4. The workmen had submitted their demands through their union on 30.8.2009, whereby they had sought absorption in the permanent service of the company and also demanded wages and service conditions, similar to those workmen employed by the company directly. It is further the case of the petitioners that even after having worked for 20 to 25 years with the respondents they are being paid Rs. 4500/- per month, whereas, the workmen on the rolls of the company are getting more than Rs. 15,000/- per month. The action of the respondent thus is not only discriminatory but against the principles of "equal pay for equal work", as well as the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. The workmen are entitled to the same service conditions as is being availed by the directly employed workmen under the provisions of Rule 25 (2)-(V)(a).

5. In this behalf it is further the contention of the petitioners that the controlling authority of these twenty two workmen, are the officers of the company who deploy these workmen on various machines in the company. The work of these people whose names are reflected on the rolls of the name lender contractor are supervised by the supervisors of the company as is evidence from the self check-*cum*-production sheets/reports, which are filled by the Production Supervisors of the company even in respect of the contractors workmen. The work being performed by these twenty two workmen are similar to those being performed by directly employed workmen. The respondent No. 1 has been taking the production work on machines from these petitioners since years. Their names are being illegally shown on the rolls of the name lender contractor even after rendering service for more than 20 to 25 years. The bonus being paid to these workmen @ of 8.33 % is also much below to the bonus paid to the regular workmen of the company, which is @ if 20 %.

6. It is, therefore, prayed that these twenty two workmen be declared the permanent workmen of the respondent no.1 company and they be provided all the service benefits at par with the similarly situated workmen of respondent No. 1 company with retrospective effect.

7. While contesting the claim, the respondents No. 1 & 2 have filed separate replies. The respondent No. 1 has *inter-alia* raised preliminary objections that the claim is not competent and maintainable as the petitioners had not approached this Court with clean hands and suppressed true and material facts from this Court. It is further the case of the respondent No. 1 that the workers reflected in the Annexure P-1 attached to demand notice dated 3.8.2009 were the workers of Abdul Hamid, the respondent No. 2, Labour Contractor. The respondent No. 2 had executed agreement with respondent No. 1 for providing contract labour in the trade of security, loading, unloading, sweeping, housekeeping etc. The respondent No. 2 has a licence under the Contract Labour (Regulation and Abolition) Act, 1970 and all these workmen are his employees. The respondent No. 2 has been filling the requisite returns as required under law. The workers supplied by the contractor are being deployed in the trade in which the respondent No. 1 has the permission to engage the contract labour. The contract labour deployed by the respondent No. 2 with the replying respondent is not prohibited in terms of the Contract Labour Act. The respondent No. 2 is making payment of wages to the workers as per the statutory provisions envisaged under the Minimum Wages Act, promulgated by the Department of Labour from time to time. It is also averred by the respondent No. 1 that the respondent No. 1 has a union by the

name and style of Eicher Karamchari Sangh, Parwanoo. There is no proper espousal through that union and as such it is bad in the eyes of law as there is no contract labour union of the respondent No.1 company.

8. On merits too, the respondent no.1 has reiterated the same contentions. It is however denied that the contract workers were performing work of a perennial nature. The service conditions of the contract workers are governed by the terms and conditions offered to them by respondent No. 2. It is denied that these workmen were engaged in manufacturing process and operating the machines. The agreement executed between respondent No. 2 and replying respondent was only for providing contract labour in the trade of loading, unloading, shifting of material, housekeeping, sweepers, toilet cleaners, gardening etc. The registration and licence issued to the respondent No. 1 and respondent No. 2 under the Contract Labour Act have also been appended by the respondent No.1. The demands raised by the workers thus are stated to be totally wrong, false, baseless and devoid of merits. Per the respondent No. 1, since these workmen are the workers of respondent No. 2, it is the respondent No. 2, who is responsible for the work and conduct of his workers. It is the respondent No.2, who is liable to make the payment of wages and also to comply the provisions of the labour laws. Even the agreement so executed between the parties, reflects so. It is denied that there is any employer-employee relationship between respondent No. 1 and the twenty two workmen.

9. The respondent No.1 thus prays that the reference be dismissed being devoid of any merits.

10. The respondent No. 2 while raising preliminary objections has fortified the grounds taken by the respondent No. 1 to contend that the claim of the petitioners is not competent and maintainable as the petitioners have concealed true and material facts from this Court and have not approached the Court with clean hands. The twenty two workmen reflected in Annexure PA, were the workmen of respondent No. 2 and were deputed to work with respondent No.1 in terms of an agreement executed between them to provide contract labour in the trade of loading, unloading, shifting of material, housekeeping, cleaning, sweeping, gardening etc. The respondent No.2 has a valid licence to deploy contract labour and the respondent No.1 too had a valid registration to engage contract labour under the Act and Rules. The workers have no employer-employee relationship with the respondent No.1 and as such their claim deserves to be rejected.

11. It is also the contention of the respondent No. 2 that these twenty two workmen are under the control and supervision of respondent No. 2 and the payment of wages is being made by him and so are the contributions under the EPF Scheme. All compliances under the labour law, legislations are being made by the said respondent. The claim of the petitioners is also not competent as it is not the representative body of the work force employed by respondent No. 2.

12. On merits too, the respondent No. 2 has averred on the same lines to contend that these workmen were being employed only in the trade of loading, unloading and housekeeping etc. They were not involved in the manufacturing process and as such cannot claim parity with the workmen employed by the respondent No. 1. It is denied that there is any violation in respect to the provisions of the Contract Labour (Regulation and Abolition) Act and the Rules or the action is discriminatory or against the provisions of the Constitution of India.

13. It is also the case of the respondent No. 2 that though these workmen are not entitled to any bonus. Whatever amount is being paid as bonus is being paid by the respondent No. 2 of his own sweet will. These workmen are also not entitled to any LTA, loans and uniforms as the respondent No. 2 has to only provide the wages in terms of service conditions and the Minimum Wages Act.

14. It is thus prayed that the claim does not merit any attention and must be answered in the negative.

15. The petitioners have filed rejoinder to the reply filed on behalf of respondent No. 1 controverting the averments in the reply and further reiterated those in the statement of claim.

16. I notice that on 6.3.2014, the following issues came to be framed by my Learned Predecessor:

1. Whether the miscellaneous demands raised by the petitioner as per demand notice dated 3.8.2009 to be fulfilled by M/s Eicher Tractor Ltd (R-1) or Abdul Hameed, Contractor (R-2), are legally justified and maintainable as alleged ? . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what monitory benefits and other service benefits etc. the concerned contract workers are entitled to? . .*OPP.*

3. Whether this petition is not maintainable as alleged? . .*OPR-1.*

4. Whether the claim petition against respondent No. 2 is also not maintainable as alleged? . .*OPR-2.*

5. Relief:

17. Having considered the pleadings, evidence and other attendant material placed on record, my findings on the issues framed are thus:—

Issue No. 1	No.
Issue No. 2	No. However, the petitioner union shall espouse their cause before the Labour Commissioner under the Contract Labour (Regulation & Abolition) Act and HP Contract Labour Rules, 1974.
Issue No. 3	No.
Issue No. 4	No
Relief:	Reference dismissed per operative part of award. However, the petitioner union is at liberty to espouse their cause before the Labour Commissioner under the Contract Labour (Regulation & Abolition) Act and HP Contract Labour Rules, 1974.

REASONS FOR FINDINGS

Issues No. 1 & 2 :

18. Both these issues are being taken up together as they are correlated and intermingled.

19. The claim set out by the union namely the Contractor Labour Union seeks to have the contractor labourers regularized and further claim all service benefits at par with the similar situated workmen engaged by the principal employer *i.e.* the respondent No. 1 company. They

also seek bonus at the same rates, which is being paid to the workmen working with the respondent No. 1. They also claim the same perks as are being provided to the regular workmen of the respondent No. 1 company and till the time their demands are not fulfilled at least an amount of Rs. 1000/- be paid every month to the said workmen. Strangely the misc. demands so raised have not been sent by the appropriate government along-with the reference. None the less the petitioner union has enclosed it along-with the statement of claim.

20. It is the case of the petitioner union that initially all these twenty two workmen whose names appears in annexure PA were engaged by the company directly and thereafter their names were shown employed through the contractor. All such entries are false and merely to deprive these workmen from the benefits with their counter-parts *i.e.* the directly employed workmen are availing who are on the rolls of the company.

21. To substantiate their case one Moti Chand who is the President to the Contract Labour Union has appeared as PW-1. Apart from reiterating the case set out in the statement of claim, he has placed on record the receipts of the EPF in respect of Jai Govind Verma and Moti Chand (petitioners) showing deposition of EPF on behalf of the company, demand notice Ex. PW-1/B, demand notice Ex. PW-1/C, supplementary demands dated 18.7.2001 Ex. PW-1/D, communications between the parties in respect of the demands Exs. PW- 1/E and Ex. PW-1/F and the settlement arrived *inter-se* the parties including the respondent No. 1 Ex. PW-1/G. The petitioner has also placed on record an extract of the self check-*cum*- production sheet and the final inspection register *vide* Exs. PW-1/H and Ex. PW-1/J.

22. In the cross-examination the petitioner however, has admitted that the twenty two workmen have not been issued any appointment letter by the respondent No.1. It is also admitted by the petitioner that the respondent No. 2 used to pay salary/wages to these twenty two workmen.

23. The petitioner union has examined one Shri Daljeet Singh who was purportedly working as an operator with the respondent company since 1980. He has deposed that the twenty two workmen were working with them in the production shop. They used to operate machines as helpers and also do the work of inspection and the said work was of permanent nature. The gate passes of the aforesaid workers were also signed by the supervisory staff of the factory. As per this witness, the production record of the permanent workers as well as the twenty two workers in question was also been maintained and production sheet Ex. PW-1/H is signed by one of the petitioner and the inspection sheet Ex. PW-1/J is also signed by one of the petitioner. As per him the record with respect of the permanent employees is also maintained in the similar manner. In cross-examination the witness has admitted that the name of the respondent company is not mentioned in Ex. PW-1/H or Ex. PW-1/J. He has however, deposed that he is not aware whether Shri Abdul Hameed, contractor (respondent No. 2) had deploying these twenty two workers as contract workers in terms of agreements between the respondent No. 1 & 2. He has feigned ignorance that the wages deduction relating to EPF and ESI were also complied by the said respondent No. 2.

24. Per contra the respondents have examined one Surender Arora, Assistant Manager, Industrial Relations. Per this witness the petitioner union is not the representative body of the work force of the contract labour workers deployed by respondent No. 2 in the company. These twenty two workers are not the workers of respondent company. They have been attached by the respondent No. 2 with the company in terms of the agreement executed for deploying contract labour between the two respondents. The respondent No. 1 has a valid registration to engage contract labour and the respondent No. 2 has a valid licence to deploy the contract labour in terms of the provisions of Contract Labour (Regulation & Abolition) Act and Rules. The labour has been provided only in the trade of security, loading, unloading, shifting of material,

housekeeping, general cleaning, sweeper, toilet cleaner, gardening and horticulture. As per this witness the workers on the rolls of respondent No.1 are performing duties in the trade of turner, fitter, mechanics and electricians. The respondent No. 2 is maintaining payment of wage register, attendance register, leave register, adult work register and other registers as required under the Factories Act/Labour Laws in respect of the said twenty two workers.

25. Further per this witness, the wage bills are being raised by the respondent No. 2 which are paid through cheque to him and the same have been placed on record. It is thus clear that the wages are being paid by the contractor. The principles of equal pay for equal work is not applicable to twenty two workers as their nature of duties are different and distinct *vis-a-vis* the workers on the rolls of the company. They are being paid wages as notified by the State Government from time to time.

26. RW-1 has also placed on record the contract entered between the company and the respondent No. 2 *vide* Ex. RW-1/B. Though, the two contracts pertain to the years 2011-12 and 2013-14. He has also placed on record the registration certificate dated 6.2.1982 as RW- 1/C, it also includes the contributions paid by the contractor in respect of the Employees Provident Fund Scheme (EPF). He has also placed on record the annual returns filed by the respondent company with the Labour Officer vide Ex. RW-1/D and the annual returns relating to the payment of minimum wages Ex. RW-1/E and Ex. RW-1/F. The returns filed under the Contract Labour (Regulation and Abolition) Act has been filed *vide* Ex. RW-1/K which shows that in the year 2009 also, 301 contract labourers were employed by the company.

27. RW-1 has deposed in his cross-examination that the respondent No. 2 contractor maintains the wage register, attendance register, leave register and the adult workers register etc. The ESI and EPF contributions are also made by the said contractor. The workers deployed by the contractor are not involved in the manufacturing process.

28. The respondents have further examined one Rajinder Kumar, to prove the licence Ex. RW-2/A, certificate of registration under the Contract Labour Act. One Rajinder Singh has been examined as RW-3 from the EPF Commissioner's office. As per this witness the contractor Shri Abdul Hamid is depositing EPF contribution for his employees. The same has been placed on record *vide* Ex. RW-3/A. He has denied that prior to 2009, the company was depositing EPF contribution of the employees. However, he has added that M/s Eicher has a different code for depositing contribution, though he has admitted that as per Ex. PW-1/B, M/s Eicher company was depositing EPF contribution of one Moti Chand.

29. The respondents have further examined RW-4 Shri Amar Nath Dubey to show that the contributions in respect of ESI were being paid by the contractor Shri Abdul Hamid in respect of the workmen who had raised the demands as per annexure PA.

30. The contractor Abdul Hamid has himself appeared as RW-5. Apart from deposing that he was providing contract labour to the respondent No.1 as per agreement entered *inter-se* them, he has deposed that these workmen had been engaged by him. They are paid their monthly wages by him. Their attendance, EPF and ESI contributions are also paid by him. The supervisors appointed by him looks after these workmen while in the company. The contract is thereupon renewed every year. He had a valid licence to employ contract labour and is a registered contractor. His workers never worked on the machines and they had nothing to do the manufacturing process of the respondent No. 1 company. He has further placed on record the extract of the adult worker register *vide* Ex. RW-5/A starting from the year 1995. He has placed on record attendance register from the year 2009 *vide* Ex. RW-5/A. He has also brought the wage register starting from the year 2009 *vide* Ex. RW-5/D. Per this witness their attendance is

being marked by him and wages are also released by him. He has supplied the aforesaid manpower to M/s Eicher *i.e.* the respondent no.1 company.

31. Even in the cross-examination the witness has deposed that these workers undertake the work of loading, unloading, shifting of material and housekeeping. He has about eighty workers with him and out of these twenty two workmen only ten are working as of now. The witness has denied that all the agreements prepared interse the parties are false. He has also denied that the entire records are false and fictitious.

32. In fact the petitioner union has sought that the twenty two workers appended in annexure PA be declared the permanent workmen of the respondent company and all service benefits may be granted to them at par with the similar situated workmen of the respondent company. The demand notice dated 3.8.2009, which is the genesis of the entire dispute also suggests that the petitioner union wanted to be regularized on the rolls of the respondent company since they have been working for last 20-25 years and doing work of permanent nature. They also claim the bonus as per the regular employees of the company. The perusal of the demand notice placed on record and the affidavit filed by the President of the union in evidence Ex. PW-1/A, go to show that admittedly the workers were working through the contractor. The name of the union itself clearly specifies so. The demand notice issued by the union on 25.11.2015, Ex. PW-1/C further lends credence to the fact that they were working on contract basis. Para No. 2 of the said demand notice itself shows that the aforesaid workers were working on contract basis through contractor, though they were engaged in work which was of continuous nature. Earlier, these workers had been engaged on contract through Mr. Noor Mohd. Who was the father of the present contractor *i.e.* respondent No. 2. PW-1 further admitted in his cross-examination that no appointment letters have been issued to any of twenty two workers by the respondent No. 1. In fact he also deposes that it was the respondent No. 2 who used to pay the salary/wages to the workmen and get their signatures on the payment register. That being so it is unambiguously clear that these twenty two workers were working through the contractor. There is also no evidence on record to suggest that initially these twenty two workmen were appointed by the respondent No. 1.

33. The workers of petitioner union, claims regularization with the principal employer *i.e.* the respondent No. 1 company, and in the alternative service benefits at par with the similar situated workmen of the principal employer. The question of regularization under the principal employer *i.e.* the respondent No. 1 can only be granted if the petitioner union is able to prove a relationship of an employer and employee *vis-a-vis* the respondent No. 1. Since, in the case in hand it is the case of the respondent No. 1 that the workmen had been engaged through the contractor, the petitioner union will have to prove that the agreements *inser-se* the respondents was a sham and was entered into camouflage the real relationship. As far as grant of same service benefits are concerned, given the fact situation, in the case in hand, it is only the contractor who would be responsible for payment of such benefits, if any. In a recent judgment passed by the **Hon'ble Supreme Court in a civil Appeal No. 1799-1800 of 2019 titled as Bharat Heavy Electrics Ltd. *Vs* Mahindra Prasad Jakhmola and others decided on 20.2.2019** and relying upon the earlier decision of the Hon'ble Supreme Court in **General Man ager Bengal Nagpur Cotton Mills, Rajn and gaon *Vs.* Bharat Lala and another's (2011) 1 SCC 635 and Balwant Rai Saluja and another *Vs.* Air India Ltd. and others (2014) 9 SCC 407** has gone to hold that two well recognized tests to find whether the contract labour are the direct employees of the principle employer are (i) Whether the principal employer pays the salary instead of contractor (ii) whether the principal employer controls and supervises the work of the employees. It has further held that the principal employer cannot be said to control and supervise the work of the employees merely because he directs the workmen of the contractor "what to do", after the contractor assign or allots the employees to the principal employer.

34. Viewed in this context what emerges from the evidence on record is that the wage and salary of these twenty two workmen are being paid by the respondent No. 2. Not only this the respondent No. 2 deposed as such categorically, while appearing as RW-5 but even the President of the petitioner union has admitted the said fact while appearing as PW-1. The conjoint reading of the evidence of RW-3 Shri Rajinder Singh, RW-4 Amarnath Dubey and RW- 5 Shri Abdul Hamid, contractor clearly goes to show that the EPF and ESI contribution of these twenty two workmen were also being paid by the contractor. The petitioners have placed on record one document showing that in the year 2003-04 EPF contribution of one Moti Chand was deposited by the principal employer. In fact deduction relating to EPF even by the principal employer may not be of much consequences as after assigning the contract labour with the principal employer they may even pay the contributions relating to the same directly. There is also no evidence that these twenty two workers were engaged directly at some point of time by the respondent No. 1.

35. Much has been urged by the learned counsel for the petitioner that these twenty two workers were in fact helping the principal employer in the manufacturing process and in this behalf they have produced on record some shift check-*cum*-production sheets and final inspection sheets Ex. PW-1/H and Ex. PW-1/J. One of the witness examined by the petitioner namely Daljeet Singh who has appeared as PW-2 has also deposed that these twenty two workers were working with them in the production shop. They used to operate machines and worked as helpers. The work was of permanent nature. Unfortunately, he has no idea as to who pays wages to these twenty two workers. Over and apart there is no evidence to show that these twenty two workmen were working on the machines and helping the principal employer in the manufacturing process. Ex. PW-1/H and Ex. PW-1/J, per-se do not reflect that these workmen were actually working on the machines and were not doing the work of loading, unloading or shifting. Something more was required to be adduced in evidence to prove the said factum. Even assuming they were doing so, the workmen could at best be entitled to wages on the principal of "equal pay for equal work", though in their own grade or trade.

36. The petitioner union has failed to prove that there was a direct relationship of an employer and an employee with the respondent No. 1. Even their own pleaded case shows that they were working through a contractor. The question of regularization thus cannot be countenanced by the respondent No. 1 as there exists no relationship of master and servant between the said respondent and the workers. Unfortunately, the petitioner union has not be able to bring on record the evidence to remotely show that the contract was sham or a camouflage. The overwhelming documentary evidence placed on record by RW-1 in the shape of agreement entered interse respondent No. 1 & 2 Ex. RW-1/B, the certificate of registration Ex. RW-1/C, annual returns filed by the company with the Labour Officer Solan Ex. RW-1/D, the returns filed by the respondents under the Contract Labour (Regulation and Abolition) Act vide Ex. RW-1/K cannot be ignored. The oral testimony of the petitioner to contend that they were working on the manufacturing process, tried to substantiated by the deposition of PW-2 does not seen to convincing. The documentary evidence does show that the labour was being employed by the respondent No. 1 through the contractors. In fact, in the year 2010, 301 contract labourers had been employed by the respondent No. 1 as is clear from Ex. RW-1/K. No specific evidence has been led to show that the agreements and the other documents were only an eye wash and a camouflage nor there is any clinching conclusive evidence that these twenty two workers were made to work on machines and were a part of the manufacturing process.

37. The petitioner union has also tried to espouse their cause *vis-a-vis* the violation of the principles of "equal pay for equal work", in the alternative. No doubt a prayer has been made but no endeavor has been made by the workers to lead evidence to show that the work done by the contractual employees and those employed by the principal employer was same or

similar and that the nature of duties of the two, the degree of skill and the dimension of the job was the same. As far as this aspect of the matter is concerned the provisions of section 25 (2)(v)(a) of the H.P. Contract Labour (Regulation and Abolition) Himachal Pradesh Rules, 1974 do indeed, in-corporate and provide that the principles of "equal pay for equal work" is applicable to the contract employees even. It has been mandated statutorily that the employees engaged by the employer through the contractor who perform the same or similar kind of work must be paid the same wages and facilities as being paid to the employees employed directly by the principal employer of the establishment. The provision further mandates that in case of any controversy whether the workmen employed by the contractor performs the same or similar kind of work as employed directly by the employer, the Labour Commissioner shall resolve such a dispute and his decision shall be final. In the case in hand the violation of the aforesaid provision *i.e.* section 25 of the Contract Labour (Regulation and Abolition) H.P Rules 1974 has been left to the exclusive domain of the Labour Commissioner and his decision has been held to be final. It is a statutory duty cast upon the Labour Commissioner.

38. The question of parity and grant of facilities as are being enjoyed by the employees directly recruited by the respondent No.1 company, the remedy lies not before this Court but before the Labour Commissioner as is provided under section 25(v) (a) which reads as under:

> "25. **(v) (a) in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work."**

39. The Hon'ble Supreme Court in **Uttar Pradesh Rajya Vidyut Utpadan** Vs. **Uttar Pradesh Mazdoor Sangh (2009) 17 SCC 318** has also held that the question of parity between the two set of workers *i.e.* those engaged by the contractor and the principal employer has to be resolved by the Labour Commissioner while exercising power under Rule 25 of the State Rule.

40. The petitioners in the present case have not approached the competent forum under Rule 25 as far as the benefits *vis-a-vis* parity and grant of similar facilities to such workmen are concerned. Since, the petitioners have failed to prove the relationship of master and servant between respondent No. 1 and the petitioner union the question of regularization perse would not arise, however, the petitioner union can still seek parity, based on the principal of "equal pay for equal work", and even grant of similar facilities as are being enjoyed by the employees directly engaged by the respondent company *i.e.* respondent No. 1 but by raising it before the competent authority *i.e.* the Labour Commissioner as per the provisions of H.P. Contract Labour (Regulation and Abolition) Rules, 1974, in vogue and the Contract Labour (Regulation and Abolition) Act, 1970. While the demand notice was raised the competent authority should have at least taken resort to the provisions of Rule 25 (v), since the entire issue hinged upon the applicability of the said Rules and the statutory obligation of the State arising from the Contract Labour (Regulation and Abolition) Act, 1970 and the State Rules in vogue. Apparently no such exercise was done and the matter was sent to this Court as an unresolved dispute. Therefore, it would be expedient and in the interest of justice, the Labour Commissioner will look into the grouse of the petitioners at least *vis-a-vis* the violation arising out of section 25 (v) of H.P. Contract Labour Rule, 1974. The petitioner union will be at liberty to approach the Labour Commissioner for appropriate relief under Rule 25 (2)(v)(a) within a period of 30 days from the passing of this order, who shall dispose of it as expeditiously as possible, un-influenced from the observation made herein.

41. The other thing which prominently comes to the fore and missed the attention of the "appropriate government" was that the said workers were admittedly working with the respondents for the 20-25 years. It is undisputed. Even if doing the work of loading, un-loading and housekeeping, as is alleged, they have been doing so perennially, therefore, it also seems to be incidental to and necessary for the trade and business carried on by the respondent No.1. Therefore, the provisions of section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 shall come into play. It *inter-alia* envisage that the "appropriate government", may prohibit the Contract Labour in an establishment keeping in view the conditions envisaged in section 10. This however has been left to the exclusive domain of the "appropriate government" and therefore only the Labour Commissioner can look into the feasibility of discontinuing and abolishing contract labour in the establishment of the respondent No.1. The principles in this behalf have been ably set-out far back in 1995, in **Gujrat Electricity Board, Thermal Power Station, Ukai, Gujrat Vs. Hind Mazdoor Sabha and ors. (1995) LLR 552**. In the aforesaid judgment, the Hon'ble Supreme Court *inter-alia* directed the appropriate government to undertake and exercise and ensure that establishments which are employing contract labour and fall within the provisions clauses (a) to (d) of section 10 (2) of the Contract Labour (Regulation & Abolition) Act, 1970 should on their own, discontinue the contract labour and absorb as many of the labour as is feasible as their direct employees. The Labour Commissioner may also keeping in view the aforesaid mandate decide the issue accordingly along-with the provisions of section 25 (2)(v)(a) of the H.P Contract Labour (Regulation and Abolition) Rules, 1974. To save the time and the cumbersome procedure the reference is being sent back to the Labour Commissioner to decide the two issues relating to section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and the dispute arising from section 25 (2)(v)(a) of the H.P. Contract Labour (Regulation & Abolition) Rules, 1974. Both the issues are decided accordingly.

Issues No. 3 & 4.

42. Nothing has been brought to my notice by both the respondents as to how the petition is not maintainable. Moreover, for the reasons detailed above, the issues are decided against the respondents.

Relief :

For the foregoing reasons discussed hereinabove supra, the reference is ordered to be sent back to the Labour Commissioner who will look into the grouse of the petitioners at least *vis-a-vis* the violation arising out of section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 and section 25 (v) of HP Contract Labour Rule, 1974. Let a copy of this award be sent to the appropriate government for publication in the official gazette and for further necessary action. File, after completion, be consigned to records.

Announced in the open Court today this 24th day of June, 2019.

Sd/-
(CHIRAG BHANU SINGH),
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है